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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,622	11/09/2001	Giacomo Stefano Roba	05788.0189	5933

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EXAMINER
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HOFFMANN, JOHN M

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/986,622	<b>Applicant(s)</b> ROBA ET AL.	
	<b>Examiner</b> John Hoffmann	<b>Art Unit</b> 1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 31-37 and 39-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-37 and 43-50 is/are rejected.
- 7) ☐ Claim(s) 39-42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 39-45 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Claims 39-45 depend (directly or indirectly) from claim 38 – which has been cancelled.

In other words they do not limit the subject matter of any claim. Claims 39-45 are not further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 34-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for “the distributor body” at line 9. It is unclear if it could be the same distributor body mentioned at line 17.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claim 51 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Examiner could find no support for the newly claimed limitation that the distribution ring is adapted as set forth in the claim – either explicit or implicit. This is deemed to be a prima facie showing on failure to comply with the requirement. The burden is now on Applicant to show the requirement is complied with, or to amend the claims so that they comply.

Furthermore, as a specific example, the flow 152 is not directed “to an upper portion of the muffle”. It is clear from figure 4 that the flow is well above the muffle 33. The flow of the claim is clearly not directed to any portion of the muffle.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 31-37 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson 2002/0029591 (or Harvey 5284499) in view of Kazuya JP 08091862 (as per Applicant's translation thereof), Strackenbrock 5160359, and Bair 4547644 and optionally in view of Harding 4988374.

See the prior Office action for the manner in which the combination of references would have all of the limitations of the claims.

Claims 31-37 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson 2002/0029591 (or Harvey 5284499) in view of Kazuya JP 08091862 (as per Applicant's translation thereof), Bair 4547644, and Miller 4678490 and optionally in view of Harding.

See the prior Office action for the manner in which the combination of references would have all of the limitations of the claims.

Claims 46-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson 2002/0029591 (or Harvey 5284499) in view of Kazuya JP 08091862 (as per Applicant's translation thereof), Bair 4547644, and Miller 4678490 and optionally in view of Harding as applied to claim 31 above, and further in view of Uhm EP 0867412.

See the prior Office action for the manner in which the combination of references would have all of the limitations of the claims.

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Claims 46-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickinson 2002/0029591 (or Harvey 5284499) in view of Kazuya JP 08091862 (as per Applicant's translation thereof), Bair 4547644, and Strackenbrock 5160359 and optionally in view of Harding as applied to claim 31 above, and further in view of Uhm EP 0867412.

See the prior Office action for the manner in which the combination of references would have all of the limitations of the claims.

### ***Response to Arguments***

Applicant's arguments filed 25 September 2006 have been fully considered but they are not persuasive.

It is argued that the cited references do not disclose the use of porous filters to improve uniformity of the flux of conditioning gas introduced into a preform-drawing environment. This is not convincing because it is not very relevant. 1) The claims do not require the porous filter to be arranged to improve uniformity of flux. The broadest reasonable interpretation of the claim appears to be so broad so as to encompass even using a filter to cause severe non-uniformity. 2) The admitted prior art supplies the evidence that it is well known to use a porous material to help evenly distribute air pressure.

The arguments regarding Paek are noted. It is noted that there appears to be no rejection that utilizes Paek.

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Applicant notes that the Official Notice did not state the use of fins or porous media is known in the environment in which they are used in the prior invention and that the use as such has not been admitted as prior art by Applicant. Examiner agrees that such is an accurate reflection of the facts. To summarize: the general use of fins/porous media is conventional; the rejection does not assert that using the fins/porous media in the specific claimed structure is conventional.

It is argued that Examiner indicated that claims 41-45 would be allowable if Applicants overcome 35 USC 112 rejections. Examiner could find no such indication. Nor does applicant point (by page and line number) to anything in the record that supports this assertion. Applicant points to the July 7, 2005 Office action. It appears that applicant erroneously interpreted a portion of the Office action. That Office action specified that the claims would be allowable if applicant could show support for those claims. Rather than show support, applicant has amended the claims to be of an entirely different scope. Examiner apologizes for any confusion.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

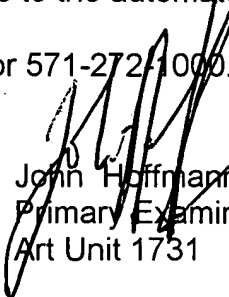
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is (571) 272 1191. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
John Hoffmann  
Primary Examiner  
Art Unit 1731

11-16-06

jmh